

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

LONNIE E. LARSON,	)	Civ. No. 09-00308 SOM-BMK
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO STRIKE ANSWER
vs.	)	AND PLAINTIFF'S MOTION FOR
	)	ENTRY OF DEFAULT
	)	
LIBERTY MUTUAL FIRE	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	
_____	)	

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE ANSWER AND  
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

Before the Court is Plaintiff's Motion to Strike Answer and Plaintiff's Motion for Entry of Default. After careful consideration of the motions, the supporting and opposing memoranda, and the attached documentation, Plaintiff's motions are DENIED.<sup>1</sup>

Plaintiff filed his Complaint in the instant case on July 7, 2009. (Opp. at 2, Oct. 5, 2009.) On August 5, 2009, the Complaint was served on Corporation Service Company dba CSC Lawyers Incorporating Service ("CSC") in Sacramento, California. (Id. at 3.) CSC forwarded the Complaint to Defendant's

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<sup>1</sup> Pursuant to Local Rule 7.2(d), the Court decides Plaintiff's Motion to Strike Answer and Motion for Entry of Default without a hearing.

principal place of business, which is in Boston, Massachusetts. (Id.) Upon receipt of the Complaint, Defendant retained Hawaii counsel. (Id.) Defendant had until August 25, 2009 to file its Answer. (Id.) Defendant claims, however, that due to a calendaring error by Defendant, Defendant did not advise Hawaii counsel of the date of service. (Id.) Defendant also claims that because the Process Receipt and Return was not filed until August 25, 2009, Hawaii counsel was unable to ascertain when service had occurred. (Id. at 8.) Defendant claims that once the Process Receipt and Return was filed, and the date of service ascertained, Hawaii counsel filed the Answer on August 31, 2009. (Id. at 4.)

On September 8, 2009, Plaintiff filed a Motion to Strike Defendant's Answer on the ground that it was untimely filed. (Doc. #9.) On October 13, 2009, Plaintiff filed a Motion for Entry of Default on the same ground. (Doc. #17.)

The Court finds that although Defendant's Answer was untimely, Defendant's conduct was not culpable and Plaintiff did not suffer any prejudice as a result therefrom. See Cont'l Ins. Co. v. Carib Link, S.A., Civ. No. 06-22917, 2007 U.S. Dist. LEXIS 70534, at \*2 (S.D. Fla., Sept. 24, 2007) (denying the plaintiff's request to strike the defendant's untimely answer because "the defendant's answer was only three days late, plaintiff [did] not allege[ ] any prejudice as a result of the delay, the defendant acted in good faith and . . .

explained that the delay was due to a calendaring error”); see also TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001) (noting that two of the three factors for setting aside an entry of default are whether the defendant’s culpable conduct led to the default and whether setting aside default would prejudice the plaintiff). The Process Receipt and Return was not filed until the date of the Answer deadline. (Id. at 8.) As a result of this delay and a calendaring error, Hawaii counsel was unable to ascertain when service occurred and the Answer due. (Id.) Upon learning the date of service, Hawaii counsel filed the Answer. (Id. at 4.) Hawaii counsel filed the Answer a mere six days late and before Plaintiff sought entry of default. (Id.) Hawaii counsel did not act in bad faith and Defendant was not prejudiced by the late filing.

Based on the foregoing, Plaintiff’s Motion to Strike Answer and Plaintiff’s Motion for Entry of Default are DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, October 28, 2009.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

Lonnie E. Larson v. Liberty Mutual Fire Insurance Co., et al., Civ. No. 09-00308 SOM-BMK;  
ORDER DENYING PLAINTIFF’S MOTION TO STRIKE ANSWER AND PLAINTIFF’S  
MOTION FOR ENTRY OF DEFAULT.